

***United States Court of Appeals
for the Second Circuit***



APPENDIX

B
Pl

74-1446

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1446

UNITED STATES OF AMERICA,

Appellant,

—against—

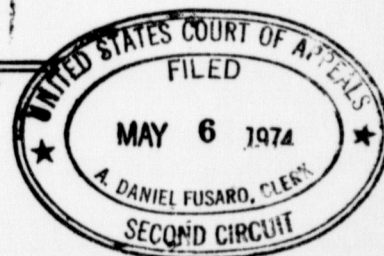
BERNHARD FEIN,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

EDWARD JOHN BOYD, V,
*United States Attorney,
Eastern District of New York.*



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

72 CR 115

Filed 9/26/72

----- X

UNITED STATES OF AMERICA

- against -

Title 18 USC §201(c)(1)
and §1623

BERNHARD FEIN,

Defendant.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between October 1, 1967 and June 1, 1968, both dates being approximate and inclusive, within the Eastern District of New York, the defendant BERNHARD FEIN, while a public official employed in the Mortgage Credit Section of the Federal Housing Administration of the Department of Housing and Urban Development, located at 175 Fulton Avenue, Hempstead, New York, corruptly and directly accepted and received approximately One Thousand Eight Hundred Dollars (\$1,800) from one Stanley Sirote and from Inter-Island Mortgages Corporation, 176-60 Union Turnpike, Flushing, New York, in return for the defendant BERNHARD FEIN's being influenced in official acts in connection with his official position in the Mortgage Credit Section of the Federal Housing Administration of the Department of Housing and Urban Development. (Title 18, United States Code, §201(c)(1).)

COUNT TWO

1. On or about September 19, 1972, within the Eastern District of New York, the defendant BERNHARD FEIN, having duly taken an oath that he would testify truly before a duly impaneled Grand Jury of the United States for the Eastern District of New

ONLY COPY AVAILABLE

York, in a case in which a law of the United States authorized an oath to be administered, did wilfully and knowingly and contrary to said oath, state material matter which he did not believe to be true, that is to say:

2. At the time and place aforesaid a Grand Jury of the United States in the Eastern District of New York was engaged in the investigation of bribery of employees of the Federal Housing Administration of the Department of Housing and Urban Development and fraud in connection with the operation of the said agency of the United States, in violation of the laws of the United States.

3. It was material to the aforesaid Grand Jury investigation to determine whether the defendant BERNHARD FEIN had had a recent telephone conversation with one Stanley Sirota concerning the payment of bribes from the said Stanley Sirota to the defendant BERNHARD FEIN.

4. On or about September 19, 1972, within the Eastern District of New York, the defendant BERNHARD FEIN appeared as a witness before the aforesaid Grand Jury and having duly taken an oath that he would testify truly, did in fact knowingly testify falsely with respect to the aforesaid material matter as follows:

* * *

Q. Have you ever received any call at home from anybody, any mortgage at all?

A. They didn't call me. I was considered the tough guy. They didn't come near me. This is my reputation.

* * *

Q. You say 1966, is the last date that it [bribe offer] could have happened. Could it have been that or before or would it have been after that?

A. I really can't say. That's what I'm trying to tell you. I told you about the incident [bribe offer], but -- as I know, it goes back about five or six years, but -- maybe longer, I really don't know.

* * *

Q. Can you answer the question directly. Did you ever have any face to face discussions with Mr. Sirote about particular files from the day of the bribe offer forward?

A. Yes.

Q. Approximately how many times did you have a face to face discussion with Mr. Sirote?

A. I would say twice.

Q. When was that, do you remember?

A. How can I remember. There were thousands of cases going through -- it's difficult.

Q. Did he ever again offer you any kind of bribe?

A. No. As I indicated, he avoided me.

Q. Did he ever have any occasion to telephone you from that day forward?

A. You mean in the office?

Q. In the office, at home, anywhere?

A. He -- I telephoned him. That was in this new job of mine. People come in with complaints. And a couple of months ago somebody came in with a complaint that a broker was holding his money and wouldn't release it. The man was spanish speaking

and he could barely speak for himself. So I told him that I could call the broker and see what I could do. I called their office and I called Miss Khoury -- she is sort of a manager there or something -- and he got on the phone. I told him what the situation was and I told him that I felt that this man should get his money back and that if he didn't see to it that this man got his money back that I would pursue the matter. He said that he would take care of it and I told the man to go down directly to Inter-Island and if he didn't get his money back to come back to me and I would see what I could do about the matter.

Q. Did Mr. Sirote offer you anything at that time?

A. No, sir.

Q. That was telephone conversation? That was a telephone conversation?

A. Yes.

Q. Was that the last time you spoke to Mr. Sirote on the telephone?

A. I would say so, yes.

Q. When was that?

A. A couple of months ago.

Q. Would you be more specific as to the date?

A. I don't know the exact date. It could have been six weeks, it could have been -- this goes on all the time. I would like to accommodate you, sir, but I really can't remember these dates because we have these problems all day long.

Q. Mr. Fein, we're talking about a man who now the Chief Underwriter says offered him a bribe. I'm trying to see what the story is with this guy?

A. Well, once this thing is out of the way, sir, you don't think of this man in any particular way. That's the end of it as far as I'm concerned. The man didn't come near me and I avoided him too, and that was it.

Q. So that was the last time you spoke to him on the telephone?

A. Yes, as far as I can recall.

***.

5. The aforesaid testimony of the defendant BERNHARD FEIN, as he then and there well knew and believed was not true in that the defendant BERNHARD FEIN had a telephone conversation with the aforesaid Stanley Sirote concerning matters material to the Grand Jury on September 12, 1972. (Title 18, United States Code, §1623)

A TRUE BILL.

FOREMAN.

UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 6

-----X
UNITED STATES OF AMERICA, :

-against- :

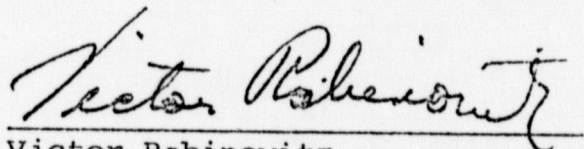
BERNHARD FEIN, / :

Defendant. :

72 CR. 1115

NOTICE OF MOTION

-----X
PLEASE TAKE NOTICE that the defendant will move this court at the United States Courthouse, Brooklyn, New York, before the Honorable John F. Dooling on January 21, 1974, at 4:30 o'clock in the afternoon of that day, or as soon thereafter as defendant may be heard, for an order pursuant to Rule 12 of the Federal Rules of Criminal Procedure dismissing the indictment herein, and for such other and further relief as to this court may seem just and proper. Defendant will rely upon the attached affidavit of Michael Krinsky, sworn to the 20th day of December, 1973, the accompanying memorandum of law and upon all the proceedings heretofore had herein.



Victor Rabinowitz
Rabinowitz, Boudin & Standard
30 East 42nd Street
New York, New York 10017
(212) OXford 7-8640
Attorneys for Defendant

Dated: New York, New York
December 20, 1973

TO:

United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Attention: Anthony E. Accetta, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 7

-----X
UNITED STATES OF AMERICA, :
 :
 -against- : 72 CR. 1115
BERNHARD FEIN, : AFFIDAVIT
 :
 Defendant. :
-----X

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MICHAEL KRINSKY, being duly sworn, deposes and says:

1. I am an attorney-at-law associated with the firm of Rabinowitz, Boudin & Standard, attorneys for the defendant. I make this affidavit in support of defendant's motion for dismissal. The ground asserted is that the indictment herein was returned after the lawful authority of the grand jury had expired. The court is respectfully referred to the accompanying memorandum of law in support of that motion.

2. The grand jury which returned the instant indictment was convened on March 17, 1971. The indictment was returned on September 26, 1972, more than eighteen months after the convening of the grand jury. It is defendant's contention that the March 17, 1971 grand jury had a lawful life of no more than eighteen months and therefore the instant indictment is null and void.

The order convening the March 17, 1971 grand jury explicitly states that the grand jury is being convened "pursuant to Rule 6(a) and (g), Federal Rules of Criminal Procedure...." A copy of the order is attached hereto as Exhibit A. Rule 6(g) of the Federal Rules of Criminal Procedure provides, in relevant part:

"A grand jury shall serve until discharged by the court but no grand jury may serve more than 18 months."

On August 30, 1973 an order was entered, a copy of which is attached hereto as Exhibit B, which purported to extend the life of the March 17, 1971 grand jury beyond the eighteen month term provided by Rule 6(g). Title 18 U.S.C. § 3331 is cited in the order as authority for such extension. As is argued in the accompanying memorandum of law, § 3331, which was enacted as part of Title 1 of the Organized Crime Control Act of 1970, P.L. 91-452, 84 Stat. 922, has no application to grand juries convened pursuant to Rule 6(g).

It is patent that the March 17, 1971 grand jury was convened exclusively pursuant to Rule 6(a) and (g), without any reference to, or authority deriving from, Section 3331. This is so for the following reasons:

(i) The order convening the March 17, 1971 grand jury explicitly states the grand jury is being convened pursuant to Rule 6(g). In contrast, the orders convening

certain other grand juries in the Eastern District of New York have explicitly noted that the grand juries there were being convened pursuant to § 3331. See Exhibits C, D and E, attached hereto.

(ii) The order convening the March 17, 1971 grand jury, in addition to explicitly citing Rule 6(g), provides, consonant with Rule 6(g), that the grand jury so convened is:

"to serve for a period not to exceed eighteen (18) months from the date it is convened or until such time prior thereto as the United States Attorney for the Eastern District of New York deems it appropriate that it be dismissed and discharged of its duties."

No provision is made in the order for an extension of the life of the grand jury beyond eighteen months. This form of order is identical to the orders convening Rule 6(g) grand juries prior to the passage of the Organized Crime Control Act of 1970 on October 15, 1970, see Exhibits F and G, and subsequent to the passage of that Act, see Exhibits H, I and J.

In contradistinction, the orders convening Section 3331 grand juries, in addition to explicitly citing Section 3331, provide, consonant with § 3331, that the grand juries so convened are:

"to serve for a period of eighteen (18) months from the date it is convened or until such time prior thereto as an order for its discharge is entered by the court pursuant to law or until such time as its term may be extended pursuant to law." (emphasis supplied)

See Exhibits C and D. (The order convening, pursuant to Section 3331, the June 19, 1972 grand jury, Exhibit E, uses a slight variation in language but is to the same effect.)

(iii) Grand juries convened pursuant to § 3331 were intended by Congress to have as their objective the investigation of organized crime. See defendant's memorandum of law, pp. 11-12. The March 17, 1971 grand jury was convened at the request of the Anti-Trust Division of the Department of Justice, for the purpose of investigating possible violations of the anti-trust laws. See page 3 of affidavit of Assistant United States Attorney Accetta, submitted in United States v. Fetell, 73 CR. 562, a copy of which is attached hereto as Exhibit K. Such matters are patently not within the bounds of "organized crime," either as that term is commonly used or as contemplated by Congress in enacting Title 1 of the Organized Crime Control Act of 1970.

While no definition of "organized crime" appears in Title 1 or elsewhere in the Act, Congress' conception of those activities, as Congress intended those activities to be the subject of investigation by Title 1 grand juries, is apparent from the legislative history of the Act. Title 1 was

enacted in order to implement the recommendations of the President's Commission on Law Enforcement and the Administration of Justice, made in the Commission's report, "The Challenge of Crime in a Free Society" (1967). See defendant's memorandum of law, pp. 11-12. The Commission, at p. 187 of its Report, described "organized crime" in the following terms:

"Organized Crime is a society that seeks to operate outside the control of the American people and their governments. It involves thousands of criminals, working within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments. Its actions are not impulsive but rather the result of intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits.

"The core of organized crime activity is the supplying of illegal goods and services--gambling, loan sharking, narcotics, and other forms of vice--to countless numbers of citizen customers. But organized crime is also extensively and deeply involved in legitimate business and in labor unions. Here it employs illegitimate methods--monopolization, terrorism, extortion, tax evasion--to drive out or control lawful ownership and leadership and to exact illegal profits from the public. And to carry on its many activities secure from governmental interference, organized crime corrupts public officials."

Congress essentially rearticulated this description in its Statement of Findings and Purpose, which prefaces the Act.

Further illumination of Congress' conception of the proper scope of Title 1 investigations is provided by Con-

gress having received in its consideration of the Act extensive information concerning the "Cosa Nostra" and the activities of the Organized Crime Section of the Justice Department and its "Strike Forces." See Hearings before the Subcommittee on Criminal Law and Procedures, Comm. on the Judiciary, United States Senate, May 18, 1969, passim; Hearings before Subcommittee No. 5, Comm. on the Judiciary, House of Representatives, May 20, 1973, passim.

Approximately seven months after being convened, the March 17, 1971 grand jury began an investigation of possible fraud in the obtaining of loans from the Federal Housing Administration and bribery of F.H.A. personnel. See Accetta affidavit, Exhibit K. While these investigations, of course, have no relevance to the purposes for which the March 17, 1971 grand jury was convened, it is to be noted that these matters likewise are not within the scope of "organized crime" as conceived by Congress or as commonly understood.

3. The order convening the March 17, 1971 grand jury, in addition to explicitly noting that the grand jury is being convened pursuant to Rule 6(g), refers to the grand jury as a "Special Grand Jury." Any argument that the March 17, 1971 grand jury can be considered a Section 3331 grand jury because the term "Special Grand Jury" is also used in Title 1 of the Organized Crime Control Act is frivolous. The denomination of a Rule 6(g) grand jury as a "Special Grand Jury" is

not uncommon in the Eastern District of New York, or elsewhere. Rather, as appears from a consideration of the practices of this court, a "Special Grand Jury" is merely one of the types of Rule 6(g) grand juries regularly convened and has no reference to § 3331.

This is dispositively established by the fact that grand juries denominated "Special Grand Juries" were convened pursuant to Rule 6(g) prior to the passage of § 3331 as part of Title I of the Organized Crime Control Act of 1970, P.L. 91-452, 84 Stat. 922, on October 15, 1970. See the orders convening the June 17, 1970 grand jury (Exhibit F) and the July 8, 1970 grand jury (Exhibit G).

While the clerk's office contains no orders convening grand juries prior to 1970, it is believed that the practice of denominating certain grand juries as "Special Grand Juries" was followed long before 1970 in this and other districts. Confirmation is provided by frequent references in cases decided before 1970 to "special grand juries." See, for example, In Re Petition for Special Grand Jury, 50 F.2d 973 (Dist. Ct., M.D. Pa. 1931); Petition of A. & H. Transportation, Inc., 319 F.2d 69 (4th Cir. 1963), cert. den., 315 U.S. 924; United States v. Wallace and Tierman, Inc., 349 F.2d 222 (D.C. 1965); Hoffman v. United States, 341 U.S. 479. See also Moore, Federal Practice, Rules of Criminal Procedure (1973), pp. 6-11, fn. 15.

Subsequent to the passage of the Organized Crime Control Act of 1970, the practice of denominating as "Special Grand Juries" certain of the grand juries convened pursuant to Rule 6(g) has been continued. In addition to the instant grand jury, convened March 17, 1971, see the orders convening the March 20th and May 3, 1972 grand juries and the July 23, 1973 grand jury, copies of which are attached hereto as Exhibits H, I and J, respectively. This practice has been in addition to convening other grand juries pursuant to Rule 6(g) and denominated "Regular Grand Juries."

It thus appears that the Rule 6(g) "Special Grand Jury" is a type of Rule 6(g) grand jury routinely convened in the Eastern District of New York, and is to be distinguished from Section 3331 grand juries.

4. If the March 17, 1971 grand jury was convened pursuant to the provisions of Section 3331, it was improperly convened. In that event, not only are the indictments returned during the extension period subject to attack, but all indictments returned by the grand jury at any time are of questionable validity.

Section 3331(a) provides that a grand jury shall be convened pursuant to Section 3331 at least once every eighteen months in judicial districts containing more than four million inhabitants "unless another Special Grand Jury [convened pur-

suant to Section 3331] is then serving." In order to convene an additional Section 3331 grand jury, the district court must determine that the volume of business of the first Section 3331 grand jury "exceeds the capacity of the grand jury to discharge its obligations," § 3332(b).

On March 17, 1971, the date on which the instant grand jury was convened, a grand jury convened on January 25, 1971, pursuant to Section 3331 (Exhibit C) was sitting. There is no determination appearing on the face of the order convening the March 17, 1971 grand jury, or elsewhere, that a determination was made pursuant to § 3332(b) that the volume of business before the January 25, 1971 grand jury exceeded its capacity.

5. It is represented in the Accetta affidavit that in mid-July and August, 1972 "significant new developments" emerged from the March 17, 1971 grand jury's investigations, leading the grand jury "to discover new crimes requiring further investigation." Accetta affidavit, p. 6, attached hereto as Exhibit K. The United States Attorney's office desired an extension of the March 17, 1971 grand jury's life, due to expire on September 16, 1972, in order to avoid the "unduly burdensome" task of re-educating another grand jury. Ibid. p. 6. Accordingly, an application was made to

Chief Judge Mishler, and an order was prepared for the court's signature. Ibid. p. 6.

The "unduly burdensome" task the United States Attorney's office sought to avoid in the above manner is a task imposed by Rule 6(g) of the Federal Rules of Criminal Procedure. The Advisory Committee and Supreme Court, which prepared and adopted the Rules, respectively, were well aware that a maximum life for a grand jury would necessitate the convening and "re-education" of a new grand jury even to pursue investigations substantially completed by a grand jury, let alone investigations of "new developments" which emerge in the seventeenth month of a grand jury's life. Orfield, 1 Criminal Procedure Under the Federal Rules (1966), § 6.2, p. 349. See, also defendant's memorandum of law, pp. 7-11.

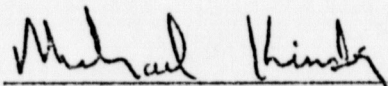
Nonetheless, an eighteen month maximum life for a federal grand jury, without possibility of extensions, was imposed.

It appears that the prosecution's desire to avoid the "unduly burdensome" task imposed by Rule 6(g) induced it to misconstrue Title 1 of the Organized Crime Control Act of 1970 in two instances in addition to the one at hand. A grand jury convened pursuant to Rule 6(g) before passage of the Act (Exhibit F) was extended beyond its term of eighteen months upon an affidavit of the United States Attorney which

cites Section 3331(a) as authority (Exhibit L). The March 30, 1972 grand jury, convened pursuant to Rule 6(g) (Exhibit H) was extended pursuant to Section 3331 (Exhibit M). Presumably, the United States Attorney's office made the application and prepared the order in that instance as well.

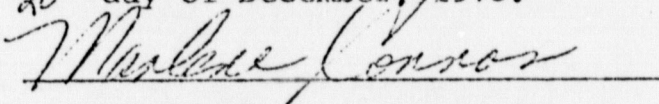
In any event, it is clear that the March 17, 1971 grand jury was convened pursuant to Rule 6(g), not Section 3331, and that as such could not be lawfully extended beyond a term of eighteen months - no matter what the motivations or understandings of the United States Attorney's office (or of the court). The instant indictment, returned more than eighteen months after the convening of the grand jury, is therefore null and void.

WHEREFORE, your affiant prays that the motion to dismiss the instant indictment be granted.



MICHAEL KRINSKY

Sworn to before me, this
20th day of December, 1973.



MARLENE CONNOR, Notary Public
State of New York, No. 03-5789465
Qualified in Bronx County
Commission Expires March 30, 1974

FILED

A 18

AVL:EJB:rap

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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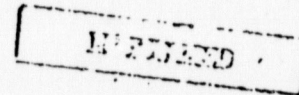
UNITED STATES OF AMERICA

ORDER FOR A
SPECIAL GRAND JURY

- against -

JOHN DOE, et. al.

Defendants.



----- X

Upon the application of the United States of America,
by its duly appointed representative, the United States Attorney
for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) and (g), Federal
Rules of Criminal Procedure, a Special Grand Jury be convened
on or about March 17, 1971 to serve for a period not to exceed
eighteen (18) months from the date it is convened or until such
time prior thereto as the United States Attorney for the Eastern
District of New York deems it appropriate to request that it be
dismissed and discharged of its duties.

Dated: Brooklyn, New York
March 11, 1971

[Signature]
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit A |

RAM:ATA:SR

A 19

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ AUG 30 1972 ★

TIME AM. _____

PM. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IN THE MATTER OF THE SPECIAL

GRAND JURY CONVENED MARCH 17,

1971.
-----X

ORDER


Pursuant to Title 18, United States Code, §3331,
it is hereby

ORDERED that the life of the Special Grand Jury,
which was convened on March 17, 1971, be and it is hereby
extended to and including March 17, 1973, for the purpose
of completing the business of the said Special Grand Jury;
and it is hereby

FURTHER ORDERED that each Grand Juror be and they
hereby are notified that their presence is required when
requested, as provided by law.

Dated: Brooklyn, New York

August 30 1972.


JACOB M. SHULER

Chief Judge

United States District Court
Eastern District of New York

Exhibit B!

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 20

-----x
UNITED STATES OF AMERICA

-v-

JOHN DOE, et al,

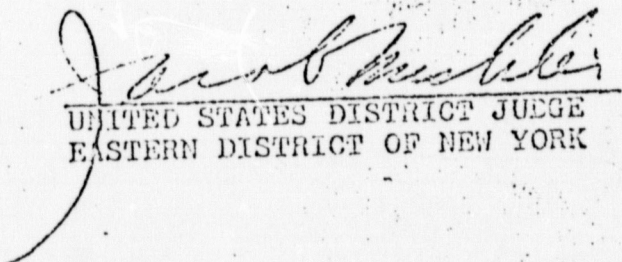
Defendants.

ORDER FOR A
SPECIAL GRAND JURY

-----x
Upon the applications of the United States of America by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) Federal Rules of Criminal Procedure, and Title 1, Chapter 216, Public Law 91-452, a Special Grand Jury be convened on or about January 25, 1971 to serve for a period of eighteen (18) months from the date it is convened or until such time prior thereto as an order for its discharge is entered by the court pursuant to law or until such time as its term may be extended pursuant to law.

Dated: Brooklyn, New York
January 22, 1971


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 22 1971 ★

READ _____

RE _____

Exhibit C



A 21

FILED

IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

☆ MAY 11 1972 ☆

TIME A.M.

P.M.

ORDER FOR A
SPECIAL GRAND JURY

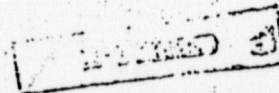
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JOHN DOE, et al,

Defendants



Upon the applications of the United States of America by its
duly appointed representative, the United States Attorney for the Eastern
District of New York, it is

ORDERED, that, pursuant to Rule 6(a) Federal Rules of Criminal
Procedure, and Title 1, Chapter 216, Public Law 91-452, a Special Grand
Jury be convened on or about May 17, 1972 to serve for a period of
eighteen (18) months from the date it is convened or until such time
prior thereto as an order for its discharge is entered by the court
pursuant to law or until such time as its term may be extended pursuant
to law.

Dated: Brooklyn, New York
May 5, 1972

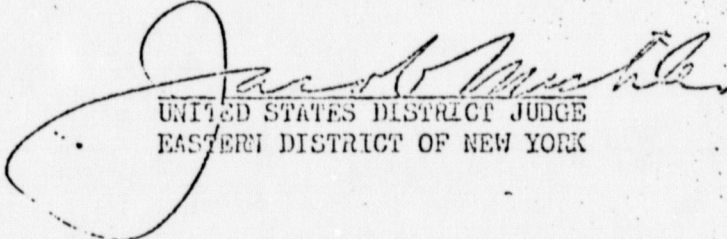

UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A. 22

UNITED STATES OF AMERICA

-against-

JOHN DOE, et al.

Defendant.

ORDER FOR A
SPECIAL GRAND JURY

FILED

Upon the application of the UNITED STATES OF AMERICA, by its duly appointed representative, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, it is

ORDERED, that pursuant to Rule 6 of the Federal Rules of Criminal Procedure, and Chapter 216 of Title 18, United States Code, a SPECIAL GRAND JURY be convened on or about June 19, 1972, to serve for a period not to exceed eighteen (18) months from the date it is convened unless the court shall order otherwise, or until such time prior thereto, as the United States Attorney for the Eastern District of New York deems it appropriate to request that it be dismissed and discharged of its duties.

Dated: Brooklyn, New York
June 19, 1972

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10000 10000 10000
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68704

Robert A. Morse
UNITED STATES DISTRICT JUDGE
Eastern District of New York

Exhibit E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 23

UNITED STATES OF AMERICA

-against-

JOHN DOE, et al.,

Defendants.

ORDER FOR A
SPECIAL GRAND
JURY

ENTERED

Upon the application of the United States of America, by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) and (g), Federal Rules of Criminal Procedure, a Special Grand Jury be convened on or about June 17, 1970 to serve for a period not to exceed eighteen (18) months from the date it is convened or until such time prior thereto as the United States Attorney for the Eastern District of New York deems it appropriate to request that it be dismissed and discharged of its duties.

Dated: Brooklyn, New York
June 16, 1970

Reed Ross
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit F

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Lynch
6-80

A 24

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

JUL 7 1970

TIME A.M. _____
P.M. _____

UNITED STATES OF AMERICA

-v-

JOHN DOE, et al,

ORDER FOR A
SPECIAL GRAND JURY

Defendants.

Upon the applications of the United States of America
by its duly appointed representative, the United States Attorney
for the Eastern District of New York, it is

ORDERED; that, pursuant to Rule 6(a) and (g), Federal
Rules of Criminal Procedure, a Special Grand Jury be convened on
or about July 8, 1970 to serve for a period not to exceed eighteen
(18) months from the date it is convened or until such time prior
thereto as the United States Attorney for the Eastern District of
New York deems it appropriate to request that it be dismissed and
discharged of its duties.

Dated: Brooklyn, New York
July 7, 1970

John R. B. [Signature]
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Mr. Castello
Clerk's Office

A 25 —

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAR 15 1972 ★

TIME A.M.
P.M.

ORDER FOR A SPECIAL
GRAND JURY

JOHN DOE, et al.,

Defendants.

-----x

Upon the application of the United States of America,
by its duly appointed representative, the United States Attorney
for the Eastern District of New York, it is

ORDERED, that pursuant to Rule 6(a) and (g), Federal
Rules of Criminal Procedure, a Special Grand Jury be convened
on or about March 20, 1971, to serve for a period not to exceed
eighteen (18) months from the date it is convened or until such
time prior thereto as the United States Attorney for the Eastern
District of New York deems it appropriate to request that it be
dismissed and discharged of its duties.

Dated: Brooklyn, New York
March 15, 1972.



UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- X

FILED

UNITED STATES OF AMERICA

ORDER FOR A SPECIAL
GRAND JURY.

-against-

JOHN DOE, et al.,

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

Defendants.

★ MAY 3 1972 ★

TIME A.M.

Upon the application of the United States of America, by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) and (g) of the Federal Rules of Criminal Procedure, a Special Grand Jury be convened on or about May 3, 1972 to serve for a period not to exceed eighteen (18) months from the date it is convened or until such time prior thereto as the United States Attorney for the Eastern District of New York deems it appropriate to request that it be dismissed and discharged of its duties.

Dated: Brooklyn, New York
May 28, 1972

William J. Pharo

UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 27

FILED

UNITED STATES OF AMERICA

-against-

ORDER FOR A
SPECIAL GRAND JURY

JOHN DOE, et al.

Defendants.

JUL 11 1973

TIME A.M.

P.M.

Upon the application of the UNITED STATES OF AMERICA
by its duly appointed representative, ROBERT A. MORSE, United
States Attorney for the Eastern District of New York,
EDWARD JOHN BOYD V, Assistant United States Attorney, of counsel,
it is

ORDERED, that pursuant to Rule 6(a) and (g), Federal
Rules of Criminal Procedure, a Special Grand Jury be convened
on or about July 23, 1973 to serve for a period not to exceed
eighteen (18) months from the date it is convened or until such
time prior thereto as the United States Attorney for the Eastern
District of New York deems it appropriate to request that it be
dismissed and discharged of its duties.

Dated: Brooklyn, New York
July //, 1973

UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 28

UNITED STATES OF AMERICA

AFFIDAVIT

-against-

73 CR 562

HUGH McDONNELL and
HENRY FETELL,

Defendants.

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss.:

ANTHONY T. ACCETTA, being duly sworn, deposes and says:
That he is an Assistant United States Attorney, on the staff
of ROBERT A. MORSE, United States Attorney for the Eastern
District of New York, duly appointed according to law and acting
as such.

This affidavit sets forth a history of the March 17, 1971
Grand Jury proceedings resulting in the indictment of Henry
Fetell and others.

In approximately October of 1970, shortly after joining
the office of the United States Attorney for the Eastern District
of New York, I was asked to assist another Assistant United
States Attorney in the preparation of a case against a real
estate broker who had allegedly committed acts of fraud in
obtaining loans insured by the Federal Housing Administration.
("Case One"). I was told by both the United States Attorney and
the Chief Assistant United States Attorney that there appeared
to be violations of federal law with respect to the Federal
Housing Administration and that I was assigned to investigate
that area.

Exhibit K

Shortly after receiving the assignment to work generally on "F.H.A." and specifically on Case One, I attended hearings held by New York State Senator Ralph Marino concerning abuses in the real estate industry. This had nothing to do with Case One, but the particular abuses, as testified to by a significant number of witnesses, suggested the possibility of widespread fraud. This impression was confirmed through contact I had with Patrick Cea, Esq., Associate Attorney of the Department of State, Division of Licenses, who specialized in the regulation of licensed real estate brokers. I learned from him that the broker in Case One had very extensive dealings with a particular private mortgage lending company ("mortgagee") and that numerous instances of false documents being submitted to the Federal Housing Administration could be proven against the broker. This information increased my interest in the broker in Case One. The entire responsibility for that case was given to me in approximately January or February of 1971.

During the period of October, 1970 and through approximately January, 1972 (and in some respects even later) my responsibilities as an Assistant United States Attorney were not restricted to what became known as the "FHA Investigation," but rather included all of the various matters a non-specialized Assistant United States Attorney is called upon to handle. As a result, Case One, being an investigation rather than a matter currently in Court, did not have priority in my personal schedule. For several months the only activity in the case was an F.B.I. field investigation of various mortgagors who dealt with the broker in

Case One. When that was completed I began the process of personally interviewing mortgagors and reviewing their applications to determine the source of false statements contained therein. From approximately April of 1971 until approximately August of 1971 the investigation was centered on the real estate broker in Case One, with some interest in the mortgagee through whom the broker obtained loans. While no Grand Jury inquiry was begun at that time, it was my intention to seek an indictment against the broker in a regular monthly Grand Jury if cooperation from that broker could not be obtained. In approximately August of 1971 the Government, for the first time, received significant information and documentation which indicated that what had been mere rumor and suspicion had an apparent basis in fact. At that point Case One expanded from one real estate broker and 20-30 mortgagors involving the general subject matter of submitting false statements to the F.H.A., to Case Two, which involved the additional crimes of conspiracy and bribery. The possible scope of defendants increased from one broker to a mortgage company and at least five of its principals, operatives or employees as well as to several Government officials employed by the Federal Housing Administration.

During the month of August, 1971, realizing the possibility of a broader investigation, I discussed the need to present extensive testimony to a Grand Jury with, to the best of my recollection, Edward J. Boyd and Robert A. Morse, who was then acting United States Attorney. It was decided to present the case to a Special Grand Jury, and I was advised by Mr. Boyd that there was a Special Grand Jury impanelled in March of 1971 for the Anti-

Division of the Justice Department; that it would be proper to use that Grand Jury to present the case; and that by using the Special Grand Jury I would not be rushed in presenting the case to the Grand Jury nor lose testimony already before a monthly Grand Jury when its term expired.

The Grand Jury began hearing testimony relating to cases One and Two in early September, 1971. The Grand Jury was not due to expire until September of 1972 and I anticipated that the case would be over long before that time. In late September of 1971 the United States Attorney announced that an investigation into mortgage fraud would be conducted and he appealed to the public for information which would be of assistance to that investigation. The result of that appeal and of continued investigation by the Federal Bureau of Investigation was not only a number of complaints from the general public, which required investigation, but also the discovery of significant criminal activity involving bribery, fraud and conspiracy on the part of several additional real estate brokers who offered substantial cooperation to the Government. This cooperation led to the establishment of cases Three and Four which overlapped with cases One and Two. By late Fall of 1971, the number of potential defendants, including mortgagees, employees and principals, and Government officials increased dramatically.

During the period of time between the Fall of 1971 and the Winter of 1972 the Grand Jury began to learn of the intricacies of the real estate industry, the structure of the F.H.A., and the activities of real estate brokers, private lending institutions, and

secondary markets. In addition, in approximately early January, 1972, a second major breakthrough was made with respect to evidence of bribery in the F.H.A. on a scale that had previously been unimagined. This information, alone, doubled the number of potential defendants and, more importantly, disclosed for the first time the existence of wide-ranging conspiracies involving large numbers of individuals in the real estate industry. This information led to cases Five through Sixteen.

At about the same time, the Fall and Winter of 1971-1972, there was an investigation by the United States Senate Anti-Trust and Monopoly Subcommittee into the general area of mortgage fraud in Federal Housing Administration programs, as well as an inquiry into the role of primary and secondary financial institutions engaged in the mortgage business. Investigations and hearings held by this Subcommittee in May, 1972 as well as the results of the Grand Jury investigation itself provided the material for further investigation which ultimately led to cases 17-25.

In November, 1971, the Grand Jury handed down its first indictment, involving a man whose activities had been brought to light during Senator Marino's hearings, alluded to earlier. In March, 1972, the Grand Jury returned its first major indictments when 40 individuals and 10

corporations were indicted for conspiracy, bribery, and the submission of false statements to the Federal Housing Administration. In May, 1972 these indictments were superseded by the same Grand Jury, the only differences being matters of legal form rather than factual substance.

At that time it was becoming apparent that the extent of corruption in the F.H.A. and in the real estate industry in general went far beyond that alleged in the March indictments. It was also becoming apparent that, because of the Grand Jury investigation prior to March of 1972, things had supposedly "cooled down" at the F.H.A., and it further began to appear that some individuals had begun to do business with the Veterans Administration, which had not yet been investigated. Prior to March of 1972 some brief testimony had been taken with respect to illegal activities at the Veterans Administration, but, due to priorities, this line of inquiry was not pursued. However, informants advised that the effects of the March indictments were wearing off, and by June of 1972 I had information that it was apparently "business as usual" at the Veterans Administration with respect to the bribery of Government officials.

round of indictments resulting from investigations conducted prior to the original expiration date. It then set about completing action on other matters, including an indictment in Case Three on which some evidence had first been presented in approximately October, 1971.

Between September 17, 1972 and February 2, 1973 (the date of the second extension Order), the Government became aware of proof of violations of the income tax laws involving persons who had been the subject of testimony during much of the course of the investigation. On or about February 2, 1973 I orally advised Chief Judge Mishler of these developments and that other pending matters required further action, and requested another extension. I further advised Chief Judge Mishler that the Grand Jury concurred in this request and on February 2, 1973 a second extension Order under Title 18, Section 3331 was signed by him.

The Grand Jury continued its work including the return of indictment 73 CR 562 on June 6, 1973. On September 17, 1973 it was terminated by order of Judge Jack B. Weinstein.

ANTHONY T. ACCETTA
Assistant U. S. Attorney

Sworn to before me this
21st day of November 1973.

CLARA S. VEDGA,
Notary Public, New York
County, New York
My Comm. Expires Nov. 30, 1974

EJB:VJF:rb

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

In the Matter

of

THE SPECIAL GRAND JURY
IMPANELLED IN JUNE, 1970

-----X

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR AN EXTENSION OF TIME FOR SPECIAL
GRAND JURY TO SERVE

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

VINCENT J. FAVORITO, being duly sworn, deposes and says, that he is an Assistant United States Attorney, duly appointed according to law and acting as such.

Your deponent is presently conducting an investigation before a Special Grand Jury, which was impanelled for service in this District on June 17, 1970. The Special Grand Jury was impanelled to sit for a term of eighteen (18) months. The term of its service will expire on the 17th day of December, 1971. The investigation has not been completed and its services will be needed for an additional period of time.

WHEREFORE, pursuant to Title 18, United States Code, Section 3331(a), your deponent respectfully requests that an order be entered to extend the time of the Special Grand Jury, impanelled on June 17, 1970, to sit for a period of eighteen (18) months, for an additional period of six (6) months, up to and including June 17, 1972.

Sworn to before me this
9th day of December, 1971.

Frederick J. ...
Notary Public, State of New York

Commission Expires March 30, 1973

Exhibit L

EJB:VOT:rb

A 37

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 13 1971 ★

TIME A.M. _____
P.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
In the Matter

of

THE SPECIAL GRAND JURY
IMPANELLED IN JUNE, 1970

ORDER

-----x
The Grand Jury having been impanelled on
June 17, 1970, to sit for a period of eighteen (18) months,
and the Court having determined that the business of the
Grand Jury has not been completed, it is

ORDERED, that the term of the Special Grand
Jury, impanelled on June 17, 1970 to sit for eighteen (18)
months, be extended for an additional period of six (6)
months, to and including June 17, 1972, or until such
time as the business of the Grand Jury shall be completed.

Dated: Brooklyn, New York
December 13, 1971.

James B. Mueller
Chief UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

EJB:BFS:cya

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
* SEP 28 1973 *

A 38

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

----- X

IN THE MATTER OF THE SPECIAL
GRAND JURY CONVENED MARCH 20,
1972.

ORDER

----- X

Pursuant to Title 18, United States Code, §3331,
it is hereby

ORDERED that the life of the Special Grand Jury,
which was convened on March 20, 1972, be and it is hereby
extended to and including March 20, 1974, for the purpose
of completing the business of the said Special Grand Jury;
and it is hereby

FURTHER ORDERED that each Grand Juror be and they
hereby are notified that their presence is required when
requested, as provided by law.

Dated: Brooklyn, New York
September 13, 1973


JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Exhibit M

TPP:ATA:SR
725066

A 39

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

-against-

Cr. No. 72 CR 1115

BERNHARD FEIN,

Defendant.

-----x

GOVERNMENT'S MEMORANDUM OF LAW

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York
Attorney for United States
of America

Anthony T. Accetta
Assistant U. S. Attorney
(Of Counsel)

PRELIMINARY STATEMENT

This memorandum is respectfully submitted in opposition to defendant's motion to dismiss the indictment in the above-captioned cause.

The essence of defendant's position is that the grand jury in question was empaneled under Rule 6 and thus could not under any circumstances serve more than eighteen months. For this reason defendant urges that the indictment returned after the grand jury's life was extended by Chief Judge Mishler under 18 U.S.C., §3331 be dismissed. This position is without merit for the reasons set forth below.

ARGUMENT

Prior to the enactment of the Organized Crime Control Act of 1970 (the Act), Rule 6 of the Federal Rules of Criminal Procedure provided the sole basis for the empaneling, tenure and powers of Federal Grand Juries.¹ The Act, under Chapter 216, provides for the empaneling of additional, "special grand juries" serving from eighteen to thirty-six months. As the legislative history makes clear, these additional grand juries are intended "to accomodate the general needs of the district and the special needs of the typically lengthened organized crime case". U.S. Code Cong. and Admin. News, 91st Cong., 2nd Sess., PL. 91-452, p. 4712. Thus, there exist two provisions authorizing the empaneling of grand juries in a given district, one which places an eighteen month limitation on service and one that allows service up to thirty-six months.

1. 18 U.S.C. §3321 covers other aspects of grand jury procedure and was established prior to 1970.

Proper statutory construction requires provisions on the same subject to be read harmoniously whenever possible and for remaining conflicts to be resolved in favor of the newer provision. Sutherland Statutory Construction, 4th Ed. §51.02, p. 290. Moreover, Section 3334 of the Act specifically incorporates these provisions applicable to grand juries to the extent they are not inconsistent with the Act. Since Rule 6 requirements apply to §3331 grand juries where not inconsistent, Rule 6 and Section 3331 overlap² and the language of Rule 6 which reads "... No Grand Jury may serve more than 18 months" must be read as being amended. (emphasis added) Any other reading would produce the anomalous result that Rule 6(g) would specifically forbid what §3331 specifically permits, i.e., that a Grand Jury may i

2. Defendant's argument that §3331 et seq. applies only to "organized crime" is misplaced, as the Act clearly contemplates the kind of activity present in this case, specifically, "misconduct or malfeasance or misfeasance in office by an appointed public officer or employee ..." U.S. Code Cong. and Admin. News, supra, at 4713.

fact serve more than eighteen months. In this case a Rule 6 grand jury empaneled to investigate an area of crime subsequently uncovered broader, more complex patterns of crime than those it was empaneled to investigate and could not complete its work within eighteen months. To deny the United States the right to extend the life of that grand jury under such circumstances would require the Government either to drop the investigation or to empanel a new grand jury and represent its evidence all over again. Such a situation generally is unsatisfactory, both from the viewpoint of the Government's time and the utilization of the time of grand jurors. Secondly, effective investigations and law enforcement would be generally hampered by such a restriction. To argue that the Government knows or should know at the time the jury is empaneled exactly what will be uncovered and how long it will take to present to the grand jury ignores the specific facts of this case where time and time again new developments occurred which involved an industry and a government agency of which this grand jury had particular knowledge

which could never have been reproduced.

The Act is silent as to whether or not §3331 can be used to extend a Rule 6 grand jury. The Government submits, however, that the use of the newer provision (§3331) to extend a Grand Jury's term is not only consistent with the purposes of the Organized Crime Control Act of 1970 but provides a statutory solution of the problem discussed above. As noted in defendant's moving papers, both Chief Judge Jacob Mishler and Judge Jack B. Weinstein have utilized Section 3331 to extend the life of grand juries other than the March 17, 1971 Grand Jury here in question, which were originally empaneled under Rule 6.

Further, as stated in the affidavit of Anthony T. Accetta dated November 21, 1973, attached to defendant's papers, there was in fact a judicial determination made as to the necessity of extending the life of the Grand Jury. Such a determination was made by Chief Judge Mishler and was based on representations made to the Court by the Government, and was further based on the consent of the Grand Jury which itself indicated that it did not consider its work complete.

Finally, to attack an indictment handed up by a validly empaneled, duly constituted and properly acting grand jury for the sole reason that it was empaneled under one valid provision and not another is to be hypertechnical about basic, important concepts. As Justice Frankfurter wrote in United States v. Johnson, 319 U.S. 503, 511-12 (1942) about another attack on an extension of a grand jury's term:

The grand jury found a systematic practice of tax evasion over a course of years, and yet, we are urged, it could not continue to ferret out one more phase of this continuous course of fraudulent conduct because that did not ripen into a separate offense until the last term of the grand jury's sitting. So to hold is to make of the grand jury a pawn in a technical game instead of respecting it as a great historic instrument of lay inquiry into criminal wrongdoing.*

* If, despite the fact that there is absolutely no prejudice to the defendant, and that none has been alleged, the defendant wishes to press a technical point, then it should be noted that there is a technical response to it. The order empaneling the grand jury in this case did refer to a "special grand jury". Without regard to what, if anything, may have been substantively intended by that phrase, the fact remains that as a technical matter the phrase "special grand jury" became a term of art after the passage by Congress of 18 U.S.C. §3331. Accordingly as a technical matter the grand jury in this case may be considered to have been empaneled as a "special grand jury" pursuant to 18 U.S.C. §3331. The fact that the section was not specifically cited is of no moment. For, by analogy, as Rule 7(c) of the Federal Rules of Criminal Procedure notes (made applicable to a "special grand jury" by 18 U.S.C. §3334), error or omission in the citation of a particular statute is not ground for dismissal of an indictment absent prejudice.

In light of the above and absent any showing of prejudice to the defendant, it is respectfully urged that the motion be, in all respects, denied.*
January 22, 1974.

* A transcript of the argument and ruling of Judge Jack B. Weinstein, dated November 21, 1973, in United States v. Fetell, (73 CR 562), denying a motion made on the same grounds as the instant motion is attached herewith.

Respectfully submitted,

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York

Anthony T. Accetta
Assistant U. S. Attorney
(Of Counsel)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :
- against - :
HUGH MC DONNELL, :
Defendant. :

73-CR-562

United States Courthouse
Brooklyn, New York

November 21, 1973
9:30 o'clock A.M.

Before :

HONORABLE JACK WEINSTEIN, U. S. D. J.

MICHAEL PICOZZI
Official Court Reporter

A P P E A R A N C E S :

A 48

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: PETER SCHLAY, ESQ.,
Assistant United States Attorney

RAYMOND BERNHARD GRUNEWALD, ESQ.,
-and-
THOMAS FITZPATRICK, ESQ.,
Attorneys for Defendant

Also Present:

HENRY FEITEL

* * * *

1 THE CLERK: For trial, United States of America
2 against Hugh McDonnell.

3 MR. SCHLAM: Good morning, your Honor.

4 MR. FLITEL: I took the liberty in appearing
5 here this morning because there are some questions
6 that have come up and if I may I would like an oppor-
7 tunity to address myself to them.

8 THE COURT: You are?

9 MR. FLITEL: Henry Feitel.

10 THE COURT: Who is appearing for the govern-
11 ment?

12 MR. FITZPATRICK: I believe the government --

13 MR. SCHLAM: I am, your Honor.

14 THE COURT: This case was set for 9:30.

15 MR. SCHLAM: I was under the impression it
16 was set for 10 o'clock.

17 THE COURT: The calendar sheet shows 9:30.

18 MR. SCHLAM: I apologize, your Honor.

19 This is the affidavit concerning the grand
20 jury.

21 THE COURT: Have you served copies on your
22 opponents?

23 MR. SCHLAM: Copies should be coming up
24 momentarily.

25 THE COURT: Are you finished reading the

affidavit?

A 50

4

MR. GRUNEWALD: I haven't got it.

THE COURT: All right, mark the affidavit submitted and we will take a recess while you get an opportunity to read it.

MR. GRUNEWALD: May I ask a few questions?

THE COURT: We will break while you read this.

(A recess was taken at this time.)

MR. SCHLAM: We have copies now for each counsel.

(A recess was taken at this time.)

THE COURT: Call the McDonnell case.

THE CLERK: United States against Hugh McDonnell.

THE COURT: Ready?

MR. SCHLAM: Ready, your Honor.

MR. GRUNEWALD: May I address myself to the one question I had regarding severance. I believe your Honor specifically read the transcript of the 19th of November and I believe your Honor did grant the government's motion for severance with respect to Mr. Feitel. Based on my reading of the minutes and the indication it strongly suggests they will proceed against Mr. McDonnell first and then at a subsequent date against Mr. Feitel.

MR. SCHLAM: We made that motion. I wasn't

1 clear on whether your Honor granted it because you
2 went --

3 THE COURT: Yes, there is no objection to
4 severing.

5 MR. GRUNDWALD: None.

6 THE COURT: Severance granted.

7 MR. GRUNDWALD: And the order would be as
8 against Mr. McDonnell first and I think the govern-
9 ment indicated that.

10 THE COURT: You will go against McDonnell
11 first?

12 MR. SCHLAM: Yes.

13 THE COURT: Do we have a trial date set?

14 THE CLERK: This Monday pending disposition
15 of the motion.

16 THE COURT: I will hear any further argument
17 you want to make on the motion with respect to the
18 grand jury.

19 MR. GRUNDWALD: I had an opportunity to
20 read the affidavit submitted by Mr. Accetta in
21 response to the inquiry as to what the grand jury,
22 the March 17th, 1971, grand jury was doing during
23 this period of time and the brief time I had to
24 read it. Based on that evidence, I noted that this
25 matter apparently was a grand jury which was never

1 impanelled for the investigation of the FHA fraud but
2 was impanelled for another investigation.

3 Under 6A and G it is clearly indicated that it
4 was an anti-trust grand jury. It was not an organized
5 crime grand jury and its purposes were apparently,
6 by Judge Rosling, limited to that specific area.

7 However, the United States Attorney's office
8 for reasons that I frankly do not understand made
9 the decision to present matters concerning FHA to
10 this anti-trust grand jury which had been impanelled
11 for a specific purpose.

12 And apparently no one at the anti-trust
13 division objected. They had, as a matter of law,
14 there was a special grand jury impanelled and
15 available under 3331 of Title 18 but they chose not
16 to utilize that. There was one impanelled only in
17 January of the same year by Judge Mishler and it
18 seems apparent and from my analysis as indicated in
19 exhibit C of my moving papers there is a clear
20 delineation by the United States Attorney itself
21 between one type of grand jury and another.

22 There was a special grand jury within the
23 purview of 3331 in existence at the time the matter
24 was presented by the anti-trust division to the
25 March 17th, 1971 grand jury.

1 The distinctions were not drawn by me but
2 drawn by the United States Attorney's office and the
3 Court acting in good faith in accordance with the
4 order submitted by the United States Attorney limited
5 that grand jury in accordance with established rules.

6 Now, looking at this affidavit, I note one
7 thing, there are no doubts as to when the grand jury
8 met. But I can see based upon the answers given
9 where they don't give specific dates, they just say
10 November or October of a given year. With respect
11 to this case, the FIA case, apparently it did not
12 appear until after August '71 with respect to the so-
13 called FIA investigation -- not the VA case, but
14 with respect to the FIA investigation which probably
15 numbered more than a dozen.

16 The grand jury was not overworked and there
17 was no necessity to do this at all. They could have
18 presented it to a grand jury who they could have
19 extended pursuant to the statutory provisions and
20 they did not do that. They violated their own
21 order.

22 THE COURT: How was your client affected by
23 all this? He had a grand jury which on its face
24 had power, which didn't object to being extended,
25 and to an application to the Court the Court extended

it.

A 54

What difference does it make whether it is grand jury number 1 or 2 as far as your client is concerned? In the federal court we don't take such a technical view of the grand jury's work. We allow hearsay to come in. Unlike the state grand juries.

Your client has had the protection of being screened by citizens who were not as far as we know biased.

MR. GRUNEWALD: As a matter of law, I don't believe that a body that doesn't have the authority to act and then acts gives it any greater weight. What happened here is there have been indictments returned by a group of citizens who might as well act as a lynch mob.

THE COURT: They were impanelled from a --

MR. GRUNEWALD: I don't mean that.

THE COURT: The fact is, they were impanelled from a regular group of citizens chosen from random from our jury list under the protective devices to insure they are not professional grand jurors or a lynch mob. They were sworn by the Court. The Court selected a foreman and assistant foreman. All of these hearings were held with stenographic minutes taken. The minutes were available. They had the

A 55

1 advice of the United States Attorney and everybody
2 else they wanted to hear. They heard witnesses and
3 they could ask questions. I don't understand what
4 harm there is here.

5 MR. GRUNEWALD: Judge --

6 THE COURT: And I don't understand what is
7 to be gained by dismissing the indictment and having
8 them turn around and re-indict, except to waste
9 another group's time.

10 MR. GRUNEWALD: Perhaps if it was heard by a
11 duly authorized grand jury they may have arrived at
12 a conclusion different than this grand jury which
13 had no authority.

14 THE COURT: It is purely happenstance. It is
15 completely irrelevant to the thing you allege.

16 MR. GRUNEWALD: I say the grand jury is
17 clearly defective just as if a statute of limitations
18 was involved. And just as if the statute had run --

19 THE COURT: It has not run.

20 MR. GRUNEWALD: I am making an analogy.

21 I believe Mr. Feitel has the right to have
22 his case presented without the extraneous material,
23 if you read it, the VA case was presented at the tail
24 end long after the grand jury had any right to hear
25 it. There was also the poison that may have been

1 introduced with respect to other areas.

2 THE COURT: You call it poison, but I don't
3 think it is quite that. These cases were related in
4 a sense that they required understanding of how these
5 agencies worked. And you get a certain amount of
6 experience with respect to major subjects of this.
7 I don't think the VA and the FH7, as far as basic
8 understanding are that distinctly different. They
9 are quite similar.

10 MR. GRUNEWALD: There was no necessity for
11 this and I cannot as an officer of the Court sit by
12 and say they had authority to act and let it go.

13 THE COURT: Nobody is criticizing you, you are
14 to be admired for your ability and devotion.

15 MR. GRUNEWALD: We cannot condone an illegal
16 act.

17 THE COURT: When did the statute run?

18 MR. SCHLAM: Your Honor, the statute would
19 run in 1975 approximately but even though, I believe
20 the statute gives us a six month grace period when
21 an indictment is dismissed in --

22 THE COURT: I am going to deny the motion. If
23 we are wrong get the Court of Appeals to reverse it.
24 If your client is acquitted, that is the end of it.
25 I don't see any point in going through with this twice.

1 MR. GRUNEWALD: If my client is acquitted I
2 can assure you you won't see him but if he is not the
3 question of double jeopardy --

4 THE COURT: Double jeopardy?

5 MR. GRUNEWALD: I have considered that possi-
6 bility. I also had another motion which I made.

7 THE COURT: I will reserve.

8 MR. FITZPATRICK: Can I be heard?

9 THE COURT: Yes.

10 MR. FITZPATRICK: I join in that motion.

11 THE COURT: I will be glad to hear you.

12 MR. FITZPATRICK: The rule states that the
13 life of the grand jury cannot go beyond 18 months.
14 Mr. Schlem indicated this was at most a technical
15 violation. The law is built on technicalities. The
16 life of the grand jury cannot go beyond 18 months.
17 I don't think the defendant has to show any prejudice.

18 THE COURT: The life of the grand jury can be
19 extended beyond 18 months. We have a statute. My
20 own feeling is we ought to construe it liberally in
21 order to save an indictment where the extension was
22 granted by the Chief Judge when he assumed it was
23 within the terms of that statute. We are talking
24 about the interpretation of the statute. I am not
25 ignoring a technical defect. If I thought the jury

1 had no power I would grant the motion but my view is
2 it has power.

3 MR. FITZPATRICK: Your Honor is ruling the
4 organized crime act can apply and extend to Rule 6
5 grand juries?

6 THE COURT: I am not saying this is a Rule 6
7 grand jury. I am saying the Chief Judge in effect
8 found this was a 3331 --

9 MR. FITZPATRICK: It is not even impanelled
10 under that provision.

11 THE COURT: I think he found it was a 3331
12 grand jury when he extended it.

13 MR. FITZPATRICK: That is a retroactive act.
14 It can't be cured nunc pro tunc.

15 THE COURT: I don't think there was a
16 question whether this was a 3331, the Chief Judge
17 found it was a 3331 grand jury when he executed that
18 order and that is what I am relying on.

19 In addition to the general nature of the
20 statute which I think applies here --

21 MR. FITZPATRICK: Your Honor, it was done on
22 the basis it would have been burdensome to present
23 the matter to another grand jury. This is a simple
24 thing that would have required ten minutes or a
25 government witness to walk in and say: "I paid Hugh

1 1 Donnell a sum of money." : would have taken ten
2 minutes. This is not the result of the massive
3 investigation such as the case across the hall. There
4 was no burden on the government in presenting this
5 case to a proper grand jury.

6 MR. GRUNEWALD: Rule 3331?

7 THE COURT: Section.

8 MR. GRUNEWALD: Thank you. It says there will
9 be a special grand jury unless another special grand
10 jury is done serving. I submit 6A and 6G grand
11 juries were convened March 17th and were deliberately
12 convened under that rule. Because there was already
13 an organized crime grand jury --

14 THE COURT: I don't think that is so. We
15 couldn't exist with one grand jury because of the
16 number of crimes committed in this district.

17 MR. GRUNEWALD: A 3331 grand jury --

18 THE COURT: How many 3331 grand juries do we
19 have?

20 MR. SCHLAM: At the present time? I believe
21 there is one.

22 THE COURT: We have a lot of organized crime
23 in this district.

24 MR. GRUNEWALD: There was supposed to be a
25 showing that the organized crime grand jury was

1 somewhat burdened, they just impanelled them for the
2 sake of having them have something to do.

3 THE COURT: I know that. It is up to the
4 Court to exercise some supervision over it and that
5 is why we have orders, and it may well be this Court
6 may be remiss in relying too heavily on the United
7 States Attorney and his judgment in impanelling grand
8 juries. If that is true, I suggest maybe the criminal
9 bar look into the matter and bring it to the attention
10 of the Court.

11 I would be very happy to take it up with the
12 Board of Judges. As it is now I can't see any
13 evidence of that.

14 MR. GRUNWALD: I also would draw to your
15 attention 3331 also provides at the end of such term,
16 or any extension the district court determines the
17 business of the grand jury has not been completed the
18 Court may enter an order. Here the Court was not
19 aware of the order submitted related to a different
20 section in which the grand jury had originally been
21 convened.

22 And certainly I say that is in contravention
23 of the real language of the statute.

24 THE COURT: I am not going to make a finding
25 on the assumption that the Chief Judge didn't know

1 what he was doing.

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2 MR. GRUNEWALD: I didn't say that. I think
3 he signed the order pro forma and evidently that is
4 a frequent occurrence.

5 MR. FITZPATRICK: The order impanelling that
6 grand jury specifically provided 6A, 6G, not to serve
7 more than 18 months. I don't see how that is able
8 to be extended --

9 THE COURT: I understand the submission and I
10 appreciate the force of it and if there is a con-
11 viction you can review the motion and I will perhaps
12 then write on it but for now I deny the motion.

13 * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 62

----- X

UNITED STATES OF AMERICA :

- against - :

BERNHARD FEIN, :

Defendant.:

72-CR-1115

MEMORANDUM
and
ORDER

----- X

APPEARANCES:

VICTOR RABINOWITZ, ESQ. (MESSRS. RABINOWITZ, BOUDIN &
STANDARD, of Counsel) for Defendant, for the
motion.

ANTHONY E. ACCETTA, ESQ. (EDWARD J. BOYD, V, ESQ.,
United States Attorney, of Counsel) for the
Government, opposed.

DOOLING, D.J.

The defendant has moved to dismiss the indictment on the ground that the Grand Jury's term could not legally be extended to the date on which the indictment was found and to the date on which the alleged perjury of Count 2 was allegedly committed before the Grand Jury.

The Special Grand Jury which found the indictment in the present case was convened on March 17th pursuant to an order of the Chief Judge made on March 11, 1971. It was established to consider anti-trust matters.

But in early September of 1971, nearly six months after the jury was first convened, it commenced to hear testimony with respect to Federal Housing Administration matters out of which the present indictment grew. The Special Grand Jury provisions of Chapter 216 of Title 18, §§ 3331 and following, had already been enacted, and a Section 3331 Special Grand Jury had been convened on January 25, 1971 by order of the Chief Judge entered January 22, 1971. It does not appear that any determination was made that the volume of the business of that Grand Jury exceeded its capacity to discharge its obligations, or that the March Grand Jury that found the present indictment was ordered into existence to make up for such a want of capacity. See 18 U.S.C. § 3332(b). Nothing, therefore, indicates that the Special Grand Jury that found the present indictment was any other Special Grand Jury than one created under Rule 6(a) and (g) as the order itself sets forth. In consequence, its term was limited by Rule 6(g) to 18 months.

The decision of Judge Weinstein on Fetell's motion in United States v. McDonnell, 73-CR-562, would unhesitatingly be followed but that the legislative history, elaborately presented by the defendant here, and

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the special circumstance that the second count in the present indictment charges perjury allegedly committed during the extended life of the Grand Jury, place the present case in a very different perspective from the case before Judge Weinstein. The language of Chapter 216 leaves no doubt that the Special Grand Juries there authorized in some but not all districts are distinctively Special Grand Juries. They have the power to apply for an enlargement of their own term if the Court fails to act (Section 3331(b)). They have the power to render reports under Section 3333, and Grand Juries generally are not regarded as having any such power of report. It must, therefore, be concluded that the present Grand Jury cannot be regarded as having been created under Chapter 216 of Title 18, and that its term had expired when the present indictment was found.

The expiration date of the Grand Jury, if its term was not validly extended, was September 17, 1972, the indictment was found on September 26, 1972, some nine days after the expiration date of the Grand Jury. Two days after the expiration of the Grand Jury's term, on September 19, 1972, the defendant was called before the Jury, sworn, and then gave the testimony which Count 2

charges as perjury.

A 65

Meanwhile, however, under date of August 30, 1972, the Chief Judge had signed an order reciting Section 3331 of Title 18 extending the life of the Special Grand Jury convened March 17, 1971 to March 17, 1973, to complete the business before it. While no formal petition for extension was submitted to the Chief Judge, Government counsel explained to the Chief Judge the substantial developments that had occurred in the investigation of F.H.A. matters and the amount of time needed to complete the work before the Grand Jury. The Chief Judge was also advised that the members of the Grand Jury had themselves voted for the extension of the life of the Grand Jury. It might be thought possible to extend the Grand Jury's life by converting the Rule 6 Special Grand Jury into a Section 3331, 3332(b) Grand Jury. However, since a Section 3331(a) Grand Jury was already sitting, conversion of the March 1971 Grand Jury into a Section 3332(b) Special Grand Jury, if possible at all would have required the special determination of Section 3332(b), and that was not made.

Nevertheless, the Grand Jury was in existence, did interrogate witnesses, and did find indictments. Could it function as a de facto Grand Jury beyond its

A 66

term where, at least, it had color of right to exist in the order made by the Chief Judge even though that order should not have been made, and, no doubt, would not have been made, had all the data been drawn to the attention of the Chief Judge? It has been said that Grand Juries are a creature of statute, In re Mills, 1890, 135 U.S. 263, 267. The several federal cases that have considered the question have all come up under an earlier form of the provision for Grand Juries, that contained in former 28 U.S.C. § 421, which in substance provided that -

"And the district judge or the senior district judge, as the case may be, may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury: Provided, however, That no grand jury shall be permitted to sit in all during more than three terms."

The cases to be discussed all turned on whether or not the investigation of the subject matter of the indictment had been commenced in and continued from the preceding term to the term in which the Grand Jury returned the indictment; in each case there was an order of court continuing the jury for the purpose of finishing investi-

A 67

gations commenced at an earlier term. United States v. Johnson, 7th Cir. 1941, 123 F. 2d 111, 119-121, reversed a conviction because the count had been found by a continued Grand Jury on subject matter not under investigation at its original term but first introduced at the continuation term. The court observed that, in spite of an earlier holding of its own, ". . . there is no such thing as a de facto Grand Jury in a Federal Court." The case was in its result reversed by the Supreme Court, 1943, 319 U.S. 503, the Court concluding that the defendants had failed to prove that the subject matter of the indictment was new and not matter under investigation by the Grand Jury during the preceding term. The Court appears to have accepted, although without express repetition, the principle of the decision of the Circuit Court of Appeals, that is, the life of the Grand Jury had expired as to all subject matter except that embraced in unfinished investigations; as to other subject matter the Grand Jury was an expired Grand Jury and its indictment would not support a conviction. Evaporated Milk Ass'n. v. Roche, 9th Cir. 1942, 130 F. 2d, 843, 846-847, is to the same effect; it came up on mandamus and was reversed on the ground that it was not a proper case for mandamus. Roche

v. Evaporated Milk Ass'n., 1943, 319 U.S. 22, 31. The lower court said that if the subject matter covered by the indictment had not been opened before the Grand Jury before the date on which the continuation order was entered, "It is conceded that . . . the grand jury had no power to consider the matter or to return the indictment." And United States v. McKay, E.D. Mich. 1942, 45 F. Supp. 1007, 1013-1015 is to the same effect and relies on in re Mills, supra, and United States v. Johnson, supra. It repeats the statements from the two cases, "The grand jury sitting in such a court is strictly a creature of statute . . . There is no such thing as a de facto grand jury in a Federal Court." The Court continued

"Its original life and authority to act, and any continued existence which it may have after the expiration of the term for which it was empaneled, depends strictly upon statutory authority, and unless that authority is complied with there is no jurisdiction to return an indictment."

Many cases on the general subject are collected in Annotation, 1961, 75 A.L.R. 2d 544, an annotation annexed to People v. Hall, 1959, 16 Ill. 2d 223, 157 N.E. 2d 26, which held that under the law of Illinois there were de facto grand juries which could function as holdover bodies at least until a new grand jury was

A 69

selected in the same county. The annotation catalogues the variety of results reached where grand juries operate beyond their terms under no orders or under defective orders; the variety of result appears to flow from the wide differences in the statutes and rules under which the grand juries are convened and function.

While Rule 6(a), (g) is in form a rule and different in its terms from former 28 U.S.C. § 421, it fixes an outer limit beyond which the life of a grand jury cannot be extended. For present purposes it is of statutory force, and it is the sole authority for establishing a grand jury other than one created in the circumstances and by resort to 18 U.S.C. § 3331.


The present motion is not one which is required by Rule 12(b)(2) and (3) to be raised before the plea is entered, since it is considered an objection that goes to jurisdiction. That point was decided under the earlier statutory form of present Rule 12 (b)(2), (3) in the McKay case.

Accordingly, it is.

ORDERED that the indictment is dismissed.

Brooklyn, New York

January 29, 1974


John F. Dooling, Jr.
U. S. District Judge

LKS:ATA:lf

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 70

- - - - -X

UNITED STATES OF AMERICA,

NOTICE OF MOTION
FOR REARGUMENT

-against-

72 CR 1115

BERNHARD FEIN,

Defendant.

- - - - -X

S I R :

PLEASE TAKE NOTICE that the UNITED STATES OF AMERICA by submission will move this Court for reargument of the Court's order dated January 29, 1974, dismissing the indictment herein. The UNITED STATES OF AMERICA will rely upon the accompanying Memorandum of Law in support of its application for reargument.

Dated: Brooklyn, New York

February 8, 1974

Yours, etc.,

EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York
Attorney for UNITED STATES
OF AMERICA
225 Cadman Plaza East
Brooklyn, N. Y. 11201

By:

ANTHONY T. ACCETTA
Assistant U. S. Attorney

TO: Victor Rabinowitz, Esq.
Rabinowitz, Loudin & Standard, Esqs.
30 East 42nd Street
New York, N. Y. 10017

Accetta

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 71

----- x

UNITED STATES OF AMERICA, :

- against - :

72 C 1115

BERNHARD FEIN, :

MEMORANDUM
and
ORDER

Defendant. :

----- x

DOOLING, D. J.

The government argues that United States v. Wallace & Tiernan, Inc., D.C. Cir. 1965, 349 F.2d 222 and Shimon v. United States, D.C. Cir. 1965, 352 F.2d 449, 450-451, require a different result from that reached in the order filed January 29, 1974.

In the first case the indictment was returned during the original term of a grand jury found to have been convened by the right judge under Rule 6(a). Alternatively, the Court held that, if not Rule 6(a) but 11 D.C. Code § 2306(a) controlled, the fact that the judge presiding in Criminal Court No. 1 rather than the Chief Judge (as Section 2306(a) required) had convened the grand jury did not invalidate the grand jury's indictments. The Court treated the defect (apparently the mode of calling the jury reflected the settled practice of the Court) as

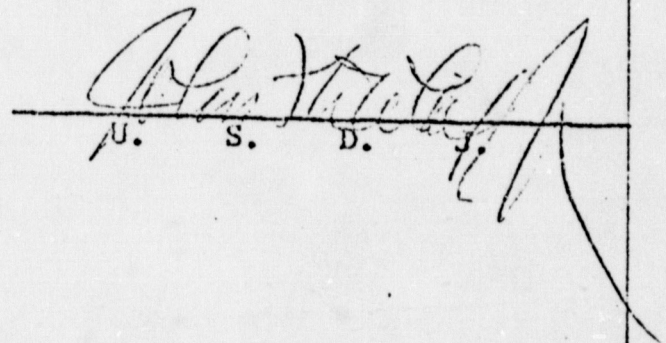
an irregularity in summoning the jury and not as a jurisdictional defect.

In Shimon the indictment was not by the allegedly improperly called and overextended grand jury. Shimon appears to have been indicted by a different grand jury for obstructing justice (18 U.S.C. § 1503) by impeding the grand jury investigation being conducted before the allegedly improperly called and overextended grand jury. The Court held that Rule 6(a), not the District Code, controlled, and that Rule 6(g) answered the overextension argument. The Court, that is, followed the primary holding and not the alternative ground of Wallace & Tiernan.

It is concluded that the decisions do not bear on the basis of the January 29, 1974, decision. Accordingly, it is

ORDERED that the motion for reargument is denied.

Dated: Brooklyn, New York
February 13 1974.


U. S. D.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

JOHN DOE, et al.,

Defendants.

ORDER FOR A
SPECIAL GRAND
JURY

----- X

Upon the application of the United States of America,
by its duly appointed representative, the United States
Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) and (g), Fed-
eral Rules of Criminal Procedure, a Special Grand Jury be
convened on or about June 17, 1970 to serve for a period
not to exceed eighteen (18) months from the date it is con-
vened or until such time prior thereto as the United States
Attorney for the Eastern District of New York deems it ap-
propriate to request that it be dismissed and discharged
of its duties.

Dated: Brooklyn, New York
June 16, 1970

Robert R. ...
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

FILED
JUN 16 12 05 PM '70

A 74

EJB:VJF:rb

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 13 1971 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TIME A.M.
P.M.

----- -x
In the Matter

of

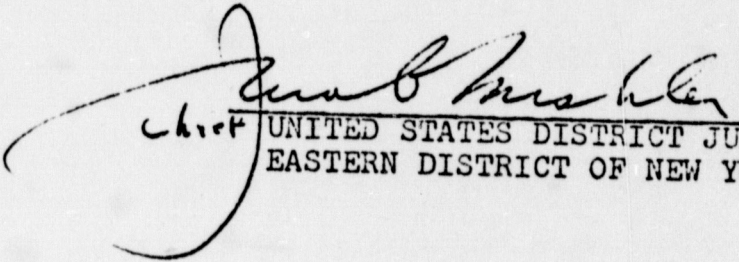
ORDER

THE SPECIAL GRAND JURY
IMPANELLED IN JUNE, 1970
----- -x

The Grand Jury having been impanelled on
June 17, 1970, to sit for a period of eighteen (18) months,
and the Court having determined that the business of the
Grand Jury has not been completed, it is

ORDERED, that the term of the Special Grand
Jury, impanelled on June 17, 1970 to sit for eighteen (18)
months, be extended for an additional period of six (6)
months, to and including June 17, 1972, or until such
time as the business of the Grand Jury shall be completed.

Dated: Brooklyn, New York
December 13, 1971.


Christ B. Mueller
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

EJB:VJF:rb

A 75

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ DEC 13 1971 ★

TIME A.M.
P.M.

-----x
In the Matter

of

THE SPECIAL GRAND JURY
IMPANELLED IN JUNE, 1970
-----x

APPLICATION FOR AN EXTENSION OF
TIME FOR SPECIAL GRAND JURY TO
SERVE

Upon the annexed affidavit of VINCENT J. FAVORITO,
Assistant United States Attorney, duly sworn to the
9th day of December, 1971, it is respectfully requested
that the time of the Special Grand Jury, impanelled on
June 17, 1970, to sit for a period of eighteen (18)
months, be extended to June 17, 1972, pursuant to Title
18, United States Code, Section 3331(a).

Dated: Brooklyn, New York
December 9, 1971.

ROBERT A. MORSE
United States Attorney
Eastern District of New York

EJB:VJF:rb

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

In the Matter

of

THE SPECIAL GRAND JURY
IMPANELLED IN JUNE, 1970

-----x

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR AN EXTENSION OF TIME FOR SPECIAL
GRAND JURY TO SERVESTATE OF NEW YORK }
COUNTY OF KINGS } ss.:

VINCENT J. FAVORITO, being duly sworn, deposes and says, that he is an Assistant United States Attorney, duly appointed according to law and acting as such.

Your deponent is presently conducting an investigation before a Special Grand Jury, which was impanelled for service in this District on June 17, 1970. The Special Grand Jury was impanelled to sit for a term of eighteen (18) months. The term of its service will expire on the 17th day of December, 1971. The investigation has not been completed and its services will be needed for an additional period of time.

WHEREFORE, pursuant to Title 18, United States Code, Section 3331(a), your deponent respectfully requests that an order be entered to extend the time of the Special Grand Jury, impanelled on June 17, 1970, to sit for a period of eighteen (18) months, for an additional period of six (6) months, up to and including June 17, 1972.

Sworn to before me this
9th day of December, 1971.

Franklin D. Davis

Notary Public, State of New York
No. 44-0001035
Qualified in Rockland County
Commission Expires March 30, 1973

FILED

A 78

Signel
6-80

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUL 7 1970 ★

TIME A.M. _____
P.M. _____

UNITED STATES OF AMERICA

-v-

JOHN DOE, et al,

Defendants.

ORDER FOR A
SPECIAL GRAND JURY

-----X

Upon the applications of the United States of America by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) and (g), Federal Rules of Criminal Procedure, a Special Grand Jury be convened on or about July 8, 1970 to serve for a period not to exceed eighteen (18) months from the date it is convened or until such time prior thereto as the United States Attorney for the Eastern District of New York deems it appropriate to request that it be dismissed and discharged of its duties.

Dated: Brooklyn, New York
July 7, 1970

John R. Butcher
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 79

-----x
UNITED STATES OF AMERICA

-v-

ORDER FOR A
SPECIAL GRAND JURY

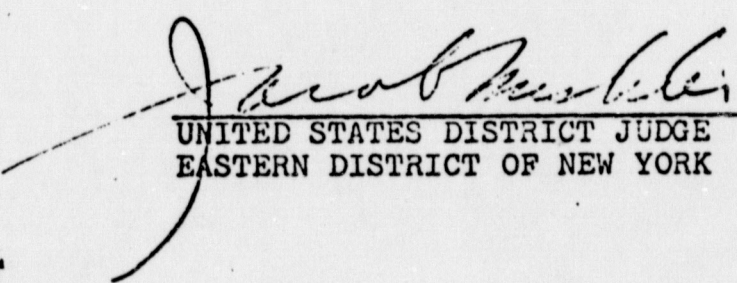
JOHN DOE, et al,

Defendants.
-----x

Upon the applications of the United States of America by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) Federal Rules of Criminal Procedure, and Title 1, Chapter 216, Public Law 91-452, a Special Grand Jury be convened on or about January 25, 1971 to serve for a period of eighteen (18) months from the date it is convened or until such time prior thereto as an order for its discharge is entered by the court pursuant to law or until such time as its term may be extended pursuant to law.

Dated: Brooklyn, New York
January 22, 1971


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JAN 22 1971 ★

TIME A.M. _____
P.M. _____



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DED:MBP:pes

A 80

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JUN 20 1972 ★

-----x
IN THE MATTER

OF

THE SPECIAL GRAND JURY
EMANELLED JANUARY 25, 1971
-----x

TIME A.M. _____
ORDER P.M. _____

M'FILED

A Special Grand Jury having been impanelled on January 25, 1971, to sit for a period of eighteen (18) months, and upon application of the United States Attorney for the Eastern District of New York, it is

ORDERED, that the term of the Special Grand Jury impanelled on January 25, 1971 to sit for eighteen (18) months, be extended for an additional six (6) months, from July 25, 1972 or until such time prior thereto as an Order for its discharge is entered by the Court pursuant to law or until such time as its term may be extended pursuant to law.

✓ Dated: Brooklyn, New York
June 20, 1972

Gen. R. 1
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

A 81

FILED

AVL:EJB:rap

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MAR 11 12 02 PM '71

CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT
NEW YORK

- - - - - X

UNITED STATES OF AMERICA

ORDER FOR A
SPECIAL GRAND JURY

- against -

JOHN DOE, et. al.

Defendants.

FILED

- - - - - X

Upon the application of the United States of America,
by its duly appointed representative, the United States Attorney
for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) and (g), Federal
Rules of Criminal Procedure, a Special Grand Jury be convened
on or about March 17, 1971 to serve for a period not to exceed
eighteen (18) months from the date it is convened or until such
time prior thereto as the United States Attorney for the Eastern
District of New York deems it appropriate to request that it be
dismissed and discharged of its duties.

Dated: Brooklyn, New York
March 11, 1971

James R. ...
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

A 82

RAM:ATA:SR

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ AUG 30 1972 ★

TIME AM. _____
PM. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
IN THE MATTER OF THE SPECIAL
GRAND JURY CONVENED MARCH 17,
1971.
-----x

ORDER

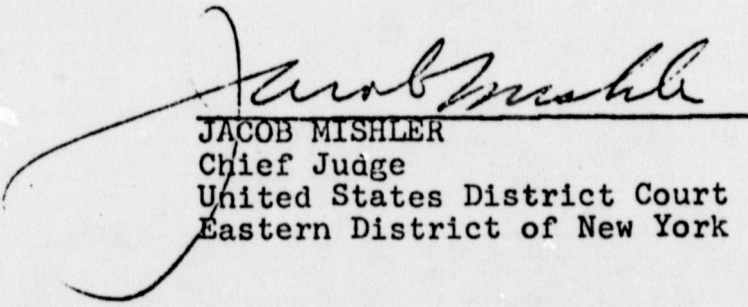
Pursuant to Title 18, United States Code, §3331,
it is hereby

ORDERED that the life of the Special Grand Jury,
which was convened on March 17, 1971, be and it is hereby
extended to and including March 17, 1973, for the purpose
of completing the business of the said Special Grand Jury;
and it is hereby

FURTHER ORDERED that each Grand Juror be and they
hereby are notified that their presence is required when
requested, as provided by law.

Dated: Brooklyn, New York

August 30 1972.


JACOB MISHLER

Chief Judge

United States District Court
Eastern District of New York

A 83

EJB:ATA:SR

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ FEB 5 1973 ★

TIME A.M. _____
P.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

IN THE MATTER OF THE SPECIAL
GRAND JURY CONVENED MARCH 17,
1971.

ORDER

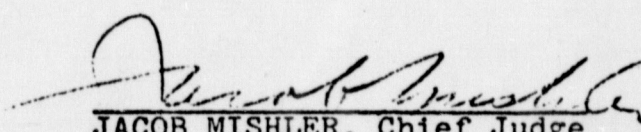
-----X

Pursuant to Title 18, United States Code, §3331,
it is hereby

ORDERED that the life of the Special Grand Jury,
which was convened on March 17, 1971, be and it is hereby
extended to and including September 17, 1973, for the
purpose of completing the business of the said Special Grand
Jury; and it is hereby

FURTHER ORDERED that each Grand Juror be and they
hereby are notified that their presence is required when
requested, as provided by law.

Dated: Brooklyn, New York
February 2 1973.


JACOB MISHLER, Chief Judge
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 84

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RECEIVED

SEP 27 1973

----- X
IN THE MATTER OF THE SPECIAL

GRAND JURY CONVENED JANUARY 18,
1972.
----- X

TIME A.M.
P.M. O.R.D E R

Upon the application of the United States of
America, by its duly appointed representative, the United
States Attorney for the Eastern District of New York, it
is hereby

ORDERED that pursuant to Rule 6(a) and (g) of
the Federal Rules of Criminal Procedure, a Special Grand
Jury which was convened on January 18, 1972 and thereafter
extended for the purpose of completing the business of the
said Special Grand Jury, be hereby dismissed and discharged
of its duties.

Dated: Brooklyn, New York
September 27, 1973

John R. Bartels
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

A 85

EJB:VJF:rb

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JOHN DOE, et al.,

Defendants.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

* MAR 15 1972 *

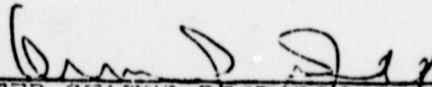
TIME A.M.
P.M.

ORDER FOR A SPECIAL
GRAND JURY

Upon the application of the United States of America,
by its duly appointed representative, the United States Attorney
for the Eastern District of New York, it is

ORDERED, that pursuant to Rule 6(a) and (g), Federal
Rules of Criminal Procedure, a Special Grand Jury be convened
on or about March 20, 1971, to serve for a period not to exceed
eighteen (18) months from the date it is convened or until such
time prior thereto as the United States Attorney for the Eastern
District of New York deems it appropriate to request that it be
dismissed and discharged of its duties.

Dated: Brooklyn, New York
March 15, 1972.


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

EJB:BFS:cya

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 86 *Miss*
FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ SEP 28 1973 ★

TIME A.M.
P.M.

----- X

IN THE MATTER OF THE SPECIAL
GRAND JURY CONVENED MARCH 20,
1972.

ORDER

----- X

Pursuant to Title 18, United States Code, §3331,
it is hereby

ORDERED that the life of the Special Grand Jury,
which was convened on March 20, 1972, be and it is hereby
extended to and including March 20, 1974, for the purpose
of completing the business of the said Special Grand Jury;
and it is hereby

FURTHER ORDERED that each Grand Juror be and they
hereby are notified that their presence is required when
requested, as provided by law.

Dated: Brooklyn, New York
September 13, 1973

Jack B. Weinstein
JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

A 87

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAY 11 1972 ★

TIME A.M.

P.M.

ORDER FOR A
SPECIAL GRAND JURY

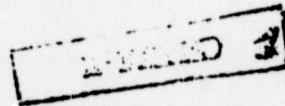
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

JOHN DOE, et al,

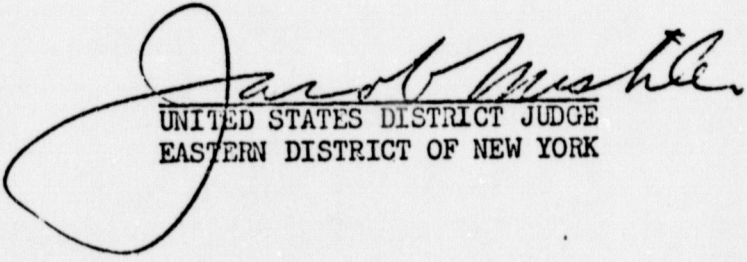
Defendants



Upon the applications of the United States of America by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) Federal Rules of Criminal Procedure, and Title 1, Chapter 216, Public Law 91-452, a Special Grand Jury be convened on or about May 17, 1972 to serve for a period of eighteen (18) months from the date it is convened or until such time prior thereto as an order for its discharge is entered by the court pursuant to law or until such time as its term may be extended pursuant to law.

Dated: Brooklyn, New York
May 5, 1972


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

A 88

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JOHN DOE, ET AL

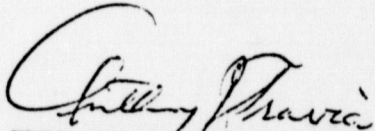
DEFENDANTS

ORDER EXTENDING TERM
OF SPECIAL GRAND JURY

Upon review of the motion of the United States of America, it is
ORDERED, that, pursuant to Rule 6(a) Federal Rules of Criminal Procedure,
and Title 18, United States Code, Section 3331(a), the term of the Special May, 1972
Grand Jury be extended for an additional period of six (6) months from the original
date of its discharge (November 5, 1973) i.e., to May 5, 1974.

Dated: Brooklyn, New York

Oct. 31, 1973


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ OCT 31 1973 ★
TIME A.M. _____
P.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK-----X
UNITED STATES OF AMERICA

v.

MOTION TO EXTEND TERM
OF SPECIAL GRAND JURY

JOHN DOE, ET AL

DEFENDANTS
-----X

The United States Attorney, by Denis E. Dillon, Attorney in Charge, Organized Crime and Racketeering Section, Department of Justice, moves pursuant to Federal Rule of Criminal Procedure 6(a) and Title 18, United States Code, Section 3331(a), to extend the term of the Special May 1972 Grand Jury for an additional six (6) months, to May 5, 1973 for the following reasons:

1. This Grand Jury has been presented with evidence in several long and complex criminal investigations, which are still incomplete; in one of these investigations, United States v. Napoli, Number 723,758, the evidence dates back to March, 1971, and presentations of it began in June, 1972.

2. If this Special Grand Jury were not extended, not only would it be discharged while its business is still incomplete, in violation of Title 18, United States Code, Section 3331(a), but voluminous evidence would have to be resubmitted to another Special Grand Jury; in merely one pending investigation, United States v. John Doe, Number 731,744, this duplication involves more than fifty (50) hours of testimony.

October 31, 1973

Denis E. Dillon
DENIS E. DILLON
Attorney in Charge
Organized Crime & Racketeering Section
Department of Justice

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

M'FILMED

UNITED STATES OF AMERICA

ORDER FOR A SPECIAL
GRAND JURY

-against-

JOHN DOE, et al.,

Defendants.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAY 3 1972 ★

TIME A.M.

Upon the application of the United States of America, by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6(a) and (g) of the Federal Rules of Criminal Procedure, a Special Grand Jury be convened on or about May 3, 1972 to serve for a period not to exceed eighteen (18) months from the date it is convened or until such time prior thereto as the United States Attorney for the Eastern District of New York deems it appropriate to request that it be dismissed and discharged of its duties.

Dated: Brooklyn, New York
May 3, 1972

Charles J. Hunter
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

JOHN DOE, et al.

Defendant.

ORDER FOR A
SPECIAL GRAND JURY

Upon the application of the UNITED STATES OF AMERICA, by its duly appointed representative, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, it is

ORDERED, that pursuant to Rule 6 of the Federal Rules of Criminal Procedure, and Chapter 216 of Title 18, United States Code, a SPECIAL GRAND JURY be convened on or about June 19, 1972, to serve for a period not to exceed eighteen (18) months from the date it is convened unless the court shall order otherwise, or until such time prior thereto, as the United States Attorney for the Eastern District of New York deems it appropriate to request that it be dismissed and discharged of its duties.

Dated: Brooklyn, New York
June 19, 1972

UNITED STATES DISTRICT JUDGE
Eastern District of New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.

★ DEC 31 1973 ★

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IN THE MATTER OF THE SPECIAL

GRAND JURY CONVENED JUNE 19, 1972.

O R D E R

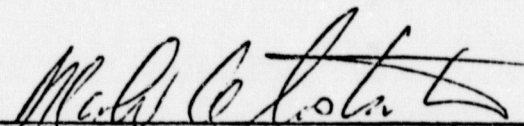
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Pursuant to Title 18, United States Code, §3331,
it is hereby

ORDERED that the life of the Special Grand Jury,
which was convened on June 19, 1972, be and it is hereby
extended to and including June 19, 1974, for the purpose
of completing the business of the said Special Grand Jury;
and it is hereby

FURTHER ORDERED that each Grand Juror be and they
hereby are notified that their presence is required when
requested, as provided by law.

Dated: Brooklyn, New York
November 27, 1973


MARK A. COSTANTINO
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED

CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

UNITED STATES OF AMERICA

★ SEP - 6 1972 ★

ORDER FOR A SPECIAL
GRAND JURY

-v-

JOHN DOE, et al,
Defendants

JUNE A.M.

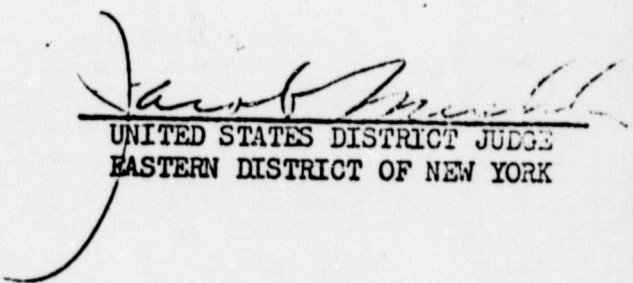
P.M.

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Upon the applications of the United States of America by its duly appointed representative, the United States Attorney for the Eastern District of New York, it is

ORDERED, that, pursuant to Rule 6 (a) Federal Rules of Criminal Procedure, and Title 1, Chapter 216, Public Law 91-452, a Special Grand Jury be convened on or about September 19, 1972 to serve for a period of eighteen (18) months from the date it is convened or until such time prior thereto as an order for its discharge is entered by the court pursuant to law or until such time as its term may be extended pursuant to law.

Dated: Brooklyn, New York
September 6, 1972


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

JOHN DOE, et al.

Defendants.

----- X

FILED

ORDER FOR A
SPECIAL GRAND JURY

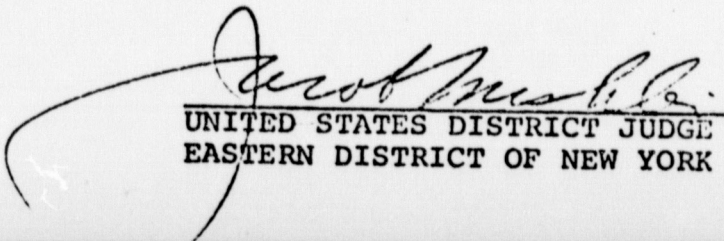
JUL 11 1973

TIME A.M.
P.M.

Upon the application of the UNITED STATES OF AMERICA by its duly appointed representative, ROBERT A. MORSE, United States Attorney for the Eastern District of New York, EDWARD JOHN BOYD V, Assistant United States Attorney, of counsel, it is

ORDERED, that pursuant to Rule 6(a) and (g), Federal Rules of Criminal Procedure, a Special Grand Jury be convened on or about July 23, 1973 to serve for a period not to exceed eighteen (18) months from the date it is convened or until such time prior thereto as the United States Attorney for the Eastern District of New York deems it appropriate to request that it be dismissed and discharged of its duties.

Dated: Brooklyn, New York
July //, 1973


UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

